

PATENT APPLICATION
Attorney Docket No.: TRV03-0001

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE PATENT APPLICATION OF)
Dennis R. Berman) Examiner: Gishnock, Nikolai A
Application No.: 10/613,564)) Group Art Unit: 3715
Filing Date: July 02, 2003)) Confirmation Number: 5486
Title: METHOD AND SYSTEM FOR LEARNING)
KEYWORD BASED MATERIALS)

SUBMITTAL OF MATERIALS FROM CO-PENDING APPLICATIONS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Recently, the Federal Circuit, in *McKesson Information Solutions, Inc., v. Bridge Medical, Inc.* (2005-1517) affirmed a District Court's determination that a patent was unenforceable due to inequitable conduct. The inequitable conduct was based upon a patent attorney's nondisclosure of office actions from co-pending applications.

In light of *McKesson*, I have attached an office action from a co-pending application of the present application. You may or may not find this office action to be material to the present application.

Respectfully submitted,



Hoyt A. Fleming III
Registration No. 41752

Date: November 11, 2008

Address correspondence to: <input checked="" type="checkbox"/> <i>Customer Number or Bar Code Label</i> 28422	or <input type="checkbox"/> <i>Correspondence Address Below</i> Park, Vaughan & Fleming LLP P.O. Box 140678 Boise, ID 83714	Direct telephone calls to: Hoyt A. Fleming III (208) 336-5237
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/496,198	07/31/2006	Dennis R. Berman	TRV03-0001-7	4930
28422	7590	08/18/2008	EXAMINER	
HOYT A. FLEMING III P.O. BOX 140678 BOISE, ID 83714			EGLOFF, PETER RICHARD	
ART UNIT	PAPER NUMBER			
			3714	
MAIL DATE	DELIVERY MODE			
08/18/2008			PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 11/496,198	Applicant(s) BERMAN, DENNIS R.
	Examiner PETER R. EGLOFF	Art Unit 3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 1/11/2008.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 41-60 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 41-60 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 31 July 2006 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 7/31/06, 12/11/06, 4/13/07, 8/23/07, 1/11/08.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application
- 6) Other: _____

DETAILED ACTION

1. The preliminary amendment filed on 13 April 2007 and substitute specification filed on 31 July 2006 have been entered. Claims 41-60 are pending in this application. Claims 1-40 have been cancelled. A new declaration has been filed on 11 January 2008 and has been accepted.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 41-60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ceretta et al. (US Patent No. 6,370,355 B1) in view of Boon (US Patent No. 6,022,221).

Regarding claims 41 and 51, Ceretta discloses a program storage device storing a computer program, the computer program for execution by a computer system having a processor and a memory, the computer program when executed by the computer system (as per claim 41) and a method executed by a computer system having a processor and a memory (as per

claim 51) performing the following: generating a first web document that enables selection of a training course that relates to a subject area (column 18, lines 40-44); generating a second web document that enables selection of a session of the training course, the session relating to a subset of the subject area (column 19, lines 22-35); and generating a third web document that enables selection of a part of the session, the part including a plurality of questions and a plurality of answers (testing) (column 19, lines 36-44; column 19, line 61). Ceretta does not explicitly disclose generating a fourth web document that enables selection of an introductory round, the introductory round enabling the typing of at least a portion of the at least one of the part's plurality of answers while referring to the at least one of the displayed part's plurality of answers, and generating a fifth web document that enables selection of a retention round, the retention round displaying, for at least a period of time, the at least one of the part's plurality of questions and a first subset of the at least one of the part's plurality of answers, the retention round enabling the typing of a second subset of the at least one of the part's plurality of answers. However, Boon discloses a computer-based learning system that includes a mode where the user is displayed the answer and retypes it into the answer field (column 9, lines 27-39), and another mode where the user is presented with a part of the answer and prompted to type the remainder of the answer (column 10, lines 5-10). It would have been obvious to one skilled in the art at the time of the invention to modify the teachings of Ceretta by adding these modes taught by Boon, with the motivation of helping the user to memorize the answers to the questions.

Regarding claims 42-44 and 52-54, Ceretta further discloses the generating at least one of the web documents includes generating a dynamic HTML document (as per claims 42 and 52) (column 5, lines 43-62), the HTML document is generated from a database (as per claims 43

and 53) (column 6, lines 59-61), and the HTML document is generated at least in part from an ASP document (as per claims 44 and 54) (column 6, line 66 – column 7, line 2).

Regarding claims 45-50 and 55-60, Ceretta further discloses the generating at least one of the web documents includes generating a web document at least in part from a database (column 7, lines 3-8) that includes a course name and course ID (course field key - column 7, lines 37-41), a session name and session ID (course instance key – column 8, lines 54-60), a part ID (column 19, lines 45-55), a course group (package ID field - column 7, lines 31-35), a session lockout period, course begin date and course completion date (column 8, lines 13-19, lines 61-67), a course order (schedule), a session start time, a session end time (column 9, lines 43-48).

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter Egloff whose telephone number is (571) 270-3548. The examiner can normally be reached on M-F 7:30am - 5:00 pm EDT.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached at (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kathleen Mosser/
Primary Examiner, Art Unit 3714

Peter Egloff
8/13/08



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/055,306	02/09/2005	Dennis R. Berman	TRV03-0001-3	1500
28422	7590	08/21/2008	EXAMINER	
HOYT A. FLEMING III			UTAMA, ROBERT J	
P.O. BOX 140678			ART UNIT	PAPER NUMBER
BOISE, ID 83714			3714	
MAIL DATE		DELIVERY MODE		
08/21/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 11/055,306	Applicant(s) BERMAN, DENNIS R.
	Examiner ROBERT J. UTAMA	Art Unit 3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

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- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 04/21/2008.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 40-44 and 50-59 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 40-44 and 50-59 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

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2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-166/08)
 Paper No(s)/Mail Date 01/11/2008

4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____

5) Notice of Informal Patent Application

6) Other: _____

DETAILED ACTION***Status of the application***

1. This office action is a response to the amendment and argument filed on: 04/21/2008. The current status of the claims is as follows: claims 40-44 and 50-59 are still pending. Claims 1-39 and 45-49 have been cancelled.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 40-44, 50-59 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 40 set forth the limitation of an answer that includes, first second, third and forth word. The specification fails to provide sufficient written description to support such limitation. Similarly, the specification also fails to provide written description of "*simultaneously display, on the computer display with the answer, a partial answer to the question, the partial answer including the first word and the third word, the partial answer not including the second word or the fourth word, the partial answer including m locations for each of the m characters in the second word, the m locations positioned in the partial answer after the first word in the partial answer and before the third word in the partial answer, the partial answer including n locations for each of the n characters in the fourth word, the n locations*

positioned in the partial answer after the third word in the partial answer; then display in a first font the m characters of the second word at the m locations in the partial answer; then receive a first character from the user, the first character not being equal to the first character of the fourth word, the first character being equal to another character of the fourth word; then not displaying in the first font any of the n characters of the fourth word in any of the n locations of the partial answer; then receive a second character from the user, the second character received from the user being equal to the first character of the fourth word; then display in the first font the first character of the fourth word at the first of the n locations in the partial answer.²

5. Claim 40-44, 50-59 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The independent claim 40 set forth the limitation of "*receiving a first character from the user, the first character not being equal to the first character of the fourth word and not displaying the any of the n characters of the fourth word in any of the n locations of the partial answers.*" However, the specification do not provide any support to enable one of ordinary skilled in the art to make or use "*receiving a first character from the user, the first character not being equal to the first character of the fourth word and not displaying the any of the n characters of the fourth word in any of the n locations of the partial answers*" with respect to the database having at least one at least one keyword and at least one non keyword. Similarly, the specification also do not provide enablement to make or use the invention of having "*simultaneously display, on the computer display with the answer, a partial answer to the question, the partial answer including the first word and the third word, the partial answer not including the second word or the fourth word, the partial answer including m locations for each of the m characters in the second word, the m locations positioned in the partial answer after the first word in the partial answer and before the third word in the partial answer, the partial answer including n locations for each of*

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the n characters in the fourth word, the n locations positioned in the partial answer after the third word in the partial answer; then display in a first font the m characters of the second word at the m locations in the partial answer; then receive a first character from the user, the first character not being equal to the first character of the fourth word, the first character being equal to another character of the fourth word; then not displaying in the first font any of the n characters of the fourth word in any of the n locations of the partial answer; then receive a second character from the user, the second character received from the user being equal to the first character of the fourth word; then display in the first font the first character of the fourth word at the first of the n locations in the partial answer" with the database having at least one at least one keyword and at least one non keyword.

6. Claim 40-44 and 50-59 rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: The independent claim 40 set forth the limitation of "database that stores a question a question and answer to the question, the answer being at least one keyword and one non-keyword ..."; the specification provided do not provide cooperative relationship between the above mention database with the "simultaneously display with answer, a partial answers ...".

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. **Claim 40-42 and 44 rejected under 35 U.S.C. 103(a) as being unpatentable over Kerwin US 2001/0036619 and in view of Buschke 4,770,636.**

Claim 40-42: The Kerwin provides a teaching of storing a question (see paragraph 63 item 608) and an answer to the question, the answer including at least one keyword and at least one non-keyword (see paragraph 68 item 616), and the answer not being provided by a user being trained, the database also separately storing the at least one keyword of the answer in a column in the database so that at least one keyword of the answer (see paragraph 52). The database also separately storing the at least one keyword of the answer in a column in the database so that the at least one keyword of the answer is stored in two location, the column not storing the at least one non-keyword of the answers.

While the Kerwin reference do not explicitly use the term "database"; the examiner takes the position that it would have been inherent for the Kerwin reference to include a database to store and retrieve the question, analyze the keyword of the answer.

The Buschke reference provides a teaching of a display on a computer display the question (see FIG 1 item 12); display on the computer display, simultaneously with the question the question (see FIG 1 item 12 line 1), the answer to the question (FIG 1 item 12 line 2) the answer including a first word, followed by a second word having m characters, followed by a third word having n characters and where m and n characters are both greater than 1 (see col. 2:40-45). In this particular case the limitation of "word" is defined as any segment of written or printed discourse appearing between spaces or between a space and

punctuation mark (see Merriam-Webster dictionary). The combination of Kerwin and Buschke fails to provide a teaching of a fourth word. However, it would have been obvious to one of ordinary skilled in the art to increase the number of words from three to a number a higher than three because it would allow for training a subject with longer words count. It has been previously held that duplication of parts have been found to be obvious variation (see MPEP 2144.04). The Buschke reference provides a teaching of simultaneous display with the answer, a partial answer to the question (see FIG 1 item 12 line 3) the partial answer including the first word and third word, the partial answer not including the second and third word the partial answer including m locations for each of the m characters in the second words, the m location position in the partial answer after the first word in the partial answer and before the third word in the partial answer the partial answer including n locations for each of the n characters in the fourth words, the n locations positioned in the partial answer after the third word in the partial answers (see col. 10:35-40 the partial answers given by showing the part of the answer and showing the rest in asterisk). Display in a first font the m characters of the second word at the m locations in partial answers (see FIG 1 item 12 number and asterisks); receiving a first characters from the user, the first character not being equal to the first characters being equal to another character of the fourth word (see col. 10:45-53 "user entering wrong input"); not displaying in the first font any of the n characters of the fourth word in any of the n location of the partial answers (see col. 10:45-53 "repeating during error"); receiving a second characters from the user being equal to the first character of the word then display in the first characters of the fourth word at the first n locations in the partial answers (see col. 10:35-43). Therefore, it would have been obvious to one of ordinary skilled in the art to include the feature of simultaneously display, on the computer display with the answer, a partial answer to the question, the partial answer including the first word and the third word, the partial answer not including the second word or the fourth word, the partial answer including m locations for each of the m characters in the second word, the m locations positioned in the partial answer

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after the first word in the partial answer and before the third word in the partial answer, the partial answer including n locations for each of the n characters in the fourth word, the n locations positioned in the partial answer after the third word in the partial answer; then display in a first font the m characters of the second word at the m locations in the partial answer; then receive a first character from the user, the first character not being equal to the first character of the fourth word, the first character being equal to another character of the fourth word; then not displaying in the first font any of the n characters of the fourth word in any of the n locations of the partial answer; then receive a second character from the user, the second character received from the user being equal to the first character of the fourth word; then display in the first font the first character of the fourth word at the first of the n locations in the partial answer, as taught by Buschke, since improving a device by applying a known technique to a known device (method, or product) ready for improvement to yield predictable result has been held to be obvious (see MPEP 2141).

Claim 44: The Kerwin reference also provides a teaching of a database table that stores a question title and wherein the program storage includes computer readable instruction that when executed by the computer system provides training to at least one user utilizing the question title (see FIG 6A item 602).

10. **Claim 43 rejected under 35 U.S.C. 103(a) as being unpatentable over Kerwin US 2001/0036619 and in view of Buschke 4,770,636 and further in view of Sugimoto**

Kerwin fails to explicitly teach of using or storing question number in the database table and of utilizing the question number to provide training. Sugimoto '661 provides a teaching of storing and using question number -along with other attributes related to a particular question- to provide training to at least one user (Sugimoto '661 Col.6:9). Therefore, it would have been obvious at the time of the invention to one of ordinary skill in the art to incorporate storing the storing of question number into Kerwin database, in light of Sugimoto '661 teaching. One of

ordinary skilled in the art would have been motivated to make this combination in order to help the student identify (along certain related attributes) which question have been answered incorrectly.

11. Claim 50 rejected under 35 U.S.C. 103(a) as being unpatentable over Kerwin US 2001/0036619 and in view of Buschke 4,770,636 and further in view of Rudmik US 6,551,109 (hereinafter Rudmik '109).

Kerwin fails to teach the act of storing data of the number of days a user has completed in a multi-day training program. Kerwin also fails to teach the act of using such data to in order to provide training to the user. Rudmik '109 provides an example of a training system that keep track of the number of days the user have been using the system and using this information to present training bits to the user (Col 3:65-66 and 4:1-17). Rudmik '109 also provides a teaching of how one skilled in the art can use such data to present learning material to the user (Col. 4:15-35). Therefore it would have been obvious to one of ordinary skilled in the art to incorporate Rudmik '109 teaching into the method and system of Kerwin. One skilled in the art would have been motivated to make such combination in order to determine the instructional sequence of user in a multi-day training program as taught by Rudmik '109.

12. Claim 51-59 rejected under 35 U.S.C. 103(a) as being unpatentable over Kerwin US 2001/0036619 and in view of Buschke 4,770,636 and further in view of Boon.

Claim 51: The Kerwin reference fails to provide fails to provide a teaching a database that stores data and computer readable medium that indicates whether the user is taking Introductory or Retention round of training. However, Boon '221 discloses wherein the database stores data indicating whether a user is taking an Introductory round (i.e., EASY display mode) of training or a Retention round (i.e., reviews) of training, and wherein the program storage device includes computer-readable instructions that when executed by the

computer system utilize the data indicating whether a user is taking an Introductory round of training or a Retention round of training (Col.4: 46-48 and Col.5: 18-23). Boon '221 also explains how the data taken during the Introductory (or EASY mode) is used to help train the user (Col.9:26-39). Therefore, it would have been obvious to one of ordinary skilled in the art to include the feature of teaching a database that stores data and computer readable medium that indicates whether the user is taking Introductory or Retention round of training, as taught by Boon '221, because it would enable the system to effectively introduce new material that is relevant the subject into a user's short and long time memory (see col. 2:57-65).

Claim 57-59: Kerwin fails to provide a teaching where the database stores the data and computer readable instruction that indicates the round number where a user successfully answer a question without a hint in the round [Claim 57], two times without a hint in the round [Claim 58] and X times without a hint in the round where X is an integer greater than 2 [Claim 59]. However, Boon '221 et al provides a teaching of a database stores the data and computer readable instruction that indicates the round number where a user successfully answer a question without a hint in the round [Claim 57], two times without a hint in the round [Claim 58] and X times without a hint in the round where X is an integer greater than 2 [Claim 59] (see Boon '221 col. 7:60-8:10). Therefore, it would have obvious to one of ordinary skilled in to include the feature of database stores the data and computer readable instruction that indicates the round number where a user successfully answer a question without a hint in the round, two times without a hint in the round and X times without a hint in the round where X is an integer greater than 2, as taught by Boon, because it would enable the system to pinpoint mistakes in a user's understanding (see col. 5:50-60).

Response to Arguments

13. Applicant's arguments with respect to claim 40—44 and 50-59 have been considered but are moot in view of the new ground(s) of rejection.

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14. With respect to the applicant's argument with the two missing IDS reference. The two references have been reviewed and the IDS has been marked accordingly.

Conclusion

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT J. UTAMA whose telephone number is (571)272-1676. The examiner can normally be reached on M-F 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on (571)272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3714

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. J. U./
Examiner, Art Unit 3714

/XUAN M. THAI/
Supervisory Patent Examiner, Art Unit 3714



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/496,246	07/31/2006	Dennis R. Berman	TRV03-0001-10	5516
28422	7590	09/04/2008	EXAMINER	
HOYT A. FLEMING III P.O. BOX 140678 BOISE, ID 83714			EGLOFF, PETER RICHARD	
ART UNIT	PAPER NUMBER			
			3714	
MAIL DATE	DELIVERY MODE			
09/04/2008			PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 11/496,246	Applicant(s) BERMAN, DENNIS R.
	Examiner PETER R. EGLOFF	Art Unit 3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on _____.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 41-48 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
 5) Claim(s) ____ is/are allowed.
 6) Claim(s) 41-48 is/are rejected.
 7) Claim(s) 42-45, 47, and 48 is/are objected to.
 8) Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 31 July 2006 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO/SB/08)
 Paper No(s)/Mail Date 7/31/06, 12/11/06, 4/13/07, 8/23/07, 1/11/08.

4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
 5) Notice of Informal Patent Application

6) Other: _____

DETAILED ACTION

Claim Objections

1. Claims 42-45, 47 and 48 are objected to because of the following informalities: Claims 42 and 43 are listed as being dependent on claim 40, which has been cancelled. For purposes of examination, the examiner will treat them as being dependent on claim 41. Appropriate correction is required.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 41-43 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ceretta et al. (US Patent No. 6,370,355 B1).

Regarding claims 41-43 and 46, Ceretta discloses a computer-readable storage medium storing a database, the database for use by a computer system having a processor and a memory,

the database for use by a computer program for implementing a learning system (see Fig. 1), the database comprising a plurality of tables, the plurality of tables including a primary key that identifies a session (course key field), a foreign key that identifies a client (personal information field), a field that identifies a number of the session (course instance key), a field that identifies a title of the session (name field), a field that is used to deactivate the session until a period of time has passed (day, start, and end time fields are used to deactivate the session until a period of time has passed, the period ending at the time specified by the start time field), a primary key that identifies a part (course instance), a foreign key that identifies the session (course key), a field that identifies a number of the part (course count), a field that identifies a title of the part (name), a foreign key that identifies a user (user ID), a foreign key that identifies the part (course instance), a field that stores a start time, a field that stores an end time, (see Fig. 3; column 7, line 9 – column 9, 67).

It is also noted that Ceretta does not explicitly disclose, as per claim 42, the field that is utilized by the computer program to deactivate the session until a period of time has passed includes a length of a time period that must transpire between portions of the session before the portion of the session is activated. Ceretta does disclose the teacher can set a day, start time and end time for a course (column 9, lines 10-13), and the examiner further takes OFFICIAL NOTICE that those skilled in the art of teaching recognize, and regularly make use of the fact that students are able to retain more information and test better when given breaks for predetermined periods of time between learning sessions. Accordingly, it would have been obvious to one skilled in the art at the time of the invention to modify the teachings of Ceretta by inactivating sessions until a period of time has passed since the last portion using the start time

and end time feature taught by Ceretta, with the motivation of helping students to retain more information.

It is further noted that Ceretta does not explicitly disclose each of the aforementioned fields and keys occur in one table (as per claim 41) or in each of two tables (as per claims 43 and 46); instead, Ceretta discloses the fields and keys occur throughout 8 tables in a database. However, at the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to use only one or two tables to store the various keys and fields cited above, and to arrange the various keys and fields as claimed by applicant, because applicant has not disclosed that using only one or two tables provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Ceretta's arrangement, and applicant's invention, to perform equally well with either the arrangement used by Ceretta or the claimed arrangement because both arrangements would perform the same function of organizing the various data fields involved in an internet based learning system. Therefore, it would have been prima facie obvious to modify the teachings of Ceretta to obtain the invention as specified in the claims, because such a modification would have been considered a mere design consideration which fails to patentably distinguish over the prior art of Ceretta.

5. Claims 44, 45, 47 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ceretta et al. (US Patent No. 6,370,355 B1) in view of Boon (US Patent No. 6,022,221).

Regarding claims 44, 45, 47 and 48, Ceretta does not explicitly disclose a primary key that identifies a question, a field that identifies a number of the question, a field that stores a title

of the question, a field that stores the question, a field that stores an answer to the question, a primary key that identifies a UserPart, a field that stores at least one keyword in the answer to the question, and a field that stores at least one keyword in the answer to the question (as per claims 44 and 47), a field that stores information related to the user's training day activities, a field that stores the user's current round, a field that stores the user's current question number, a field that stores the number of retries that the user used on at least one question, and a field that stores the number of times that the user utilized a hint to answer a question in the current round (as per claims 45 and 48).

However, Boon discloses a similar learning system including a primary key that identifies a question, a field that identifies a number of the question, a field that stores a title of the question, a field that stores the question, a field that stores an answer to the question, and a primary key that identifies a UserPart (column 4, lines 32-63), a field that stores at least one keyword in the answer to the question, (column 8, lines 10-20), a field that stores information related to the user's training day activities, a field that stores the user's current round, and a field that stores the user's current question number (column 4, lines 52-63), a field that stores the number of retries that the user used on at least one question (Repeat Number - column 7, line 61 – column 8, line 9), and a field that stores the number of times that the user utilized a hint to answer a question in the current round (column 10, lines 17-39).

It would have been obvious to one skilled in the art at the time of the invention to modify the teachings of Ceretta by adding all of these fields and keys taught by Boon, with the motivation of tracking the user's progress with each question, in order to optimize the user's chances of memorizing the questions' subject matter.

Furthermore, the examiner has shown in the rejection of claims 41, 43 and 46, above, that it would have been an obvious matter of design choice to one skilled in the art at the time of the invention to modify the teachings of Ceretta by arranging the cited fields and keys in the claimed arrangement of one or two tables, as claimed in claims 41, 43 and 46. Similarly, the examiner maintains that it would have been an obvious matter of design choice to one skilled in the art to arrange the fields and keys cited by Boon in the third and fourth tables recited in claims 44 and 47, and 45 and 48, respectively, with the rationale and motivation being the same as that set forth in the rejection of claims 41, 43 and 46, above.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter Egloff whose telephone number is (571) 270-3548. The examiner can normally be reached on M-F 7:30am - 5:00 pm EDT.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached at (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/Kathleen Mosser/
Primary Examiner, Art Unit 3714

Peter Egloff
8/28/08



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/496,293	07/31/2006	Dennis R. Berman	TRV03-0001-11	5558
28422	7590	10/16/2008	EXAMINER	
HOYT A. FLEMING III			EGLOFF, PETER RICHARD	
P.O. BOX 140678			ART UNIT	PAPER NUMBER
BOISE, ID 83714			3715	
MAIL DATE		DELIVERY MODE		
10/16/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 11/496,293	Applicant(s) BERMAN, DENNIS R.
	Examiner PETER R. EGLOFF	Art Unit 3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on ____.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 41-57 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) Claim(s) ____ is/are allowed.
- 6) Claim(s) 41-57 is/are rejected.
- 7) Claim(s) ____ is/are objected to.
- 8) Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 31 July 2006 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. ____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 7/31/06, 12/11/06, 4/18/07, 8/23/07, 1/11/08.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) Notice of Informal Patent Application
- 6) Other: ____

4/22/08 9:9/08

DETAILED ACTION***Claim Rejections - 35 USC § 101***

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 41-57 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 41 is directed toward a program storage device storing a computer program. The computer program is recorded on a computer-readable medium and thus falls under the four statutory categories of invention (i.e. process, machine, manufacture, and composition of matter). However, the invention disclosed in the claims is directed towards the judicial exception of an abstract idea (retrieving data from a table and generating a Web document or an image). No physical transformation is present in the claims to establish a practical application of the abstract idea. Furthermore, the claims do not produce a useful, concrete, and tangible result. “Generating a Web document” may be useful and concrete, but is not tangible. While the web document or image are tangible, the claims are directed towards a computer program that performs a method. The claims do not explicitly disclose that the computer program users the resulting web document or images for any specific purpose or positively recite any steps that would use the web document or image in a tangible result. Thus, the claims are directed toward non-statutory subject matter. Claims 42-57 are rejected for failing to cure the deficiency of their parent claim 41, above.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 41 and 53-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ceretta et al. (US Patent No. 6,370,355 B1).

Regarding claim 41, Ceretta discloses a program storage device, the program storage device containing computer readable instructions that when executed by a computer having a processor, a memory and a display, perform the following acts: retrieving (loading and updating - column 6, line 61-64) a field that identifies a client from a first database table (column 7, lines 15-27), and a field that identifies a course from a second database table (column 7, lines 37-41), and generating a Web document for use in a training course, the Web document including a question, an answer to the question (column 20, lines 36-47). It is noted that Ceretta discloses a user interface item (hyperlink) that allows the student to enter an examination, but does not explicitly disclose the Web document contains a user interface item. However, an online

examination would not function without at least one user interface item operable by the student to enter answers to the exam, and thus the user interface item on the Web document is inherent in the teachings of Ceretta. Furthermore, Ceretta does not explicitly disclose retrieving a third field that includes the graphical user interface item from a third database table, however one skilled in the art at the time of the invention would readily recognize that the user interface items would have to be stored somewhere in the system, and considering the fact that Ceretta teaches organizing similar fields in a series of database tables in order to neatly organize the various data needed by the system, it would have been obvious to one skilled in the art at the time of the invention to modify the teachings of Ceretta by specifying a user interface item is stored in and retrieved from a third database table, with the motivation of arranging test data in an orderly fashion.

Regarding claim 53, Ceretta further discloses the field that identifies the client is a primary key, and wherein the first database table includes a field that identifies a client name (column 7, lines 15-28), a field that identifies the number of days of training that a student must take to complete a training session (column 8, lines 13-19), and a field that is used by the computer readable instructions to control a training sequence (column 9, lines 35-41). It is noted that in the embodiment taught by Ceretta, these fields occur in separate tables, however Ceretta also discloses that all data may be located within a single table (column 7, lines 3-8).

Regarding claims 54 and 56, Ceretta further discloses the field that identifies the course is a primary key (column 7, lines 15-28), and further discloses a field that identifies the name of the course (column 7, lines 15-28), and a field that is used by the

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computer readable instructions to group the course with other courses (package ID field - column 7, lines 28-35).

Regarding claims 55 and 57, Ceretta further discloses a database table includes a primary key that identifies a client profile (student) and a foreign key that identifies the client (end-user ID) (see fig. 3). Ceretta does not explicitly disclose a field that indicates whether the client has an active graphical user interface item, however the examiner takes OFFICIAL NOTICE that computer applications that include the option of enabling or disabling a customized graphical user interface according to the preference of the user are well known in the art, and it would have been obvious to one skilled in the art at the time of the invention to modify the teachings of Ceretta by adding a field that indicates whether a client has an active graphical user interface, with the motivation of allowing the user to decide whether he desires to customize his graphical interface.

5. Claims 42-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ceretta et al. (US Patent No. 6,370,355 B1) in view of Pellegrino et al. (US Patent No. 6,149,441).

Regarding claims 42-52, Ceretta does not explicitly disclose the graphical user interface item is a header image (as per claims 42-44), the third database includes a field that identifies a horizontal and vertical position of the header image and wherein the Web document includes the header image positioned at the horizontal and vertical position (as per claims 43 and 44), the graphical user interface item is a footer image (as per claims 45-47), the third database includes a field that identifies a horizontal and vertical position of the footer image and wherein the Web document includes the footer image positioned at

the horizontal and vertical position (as per claims 46 and 47), the graphical user interface item is a background image (as per claim 48), and the Web document includes the background image (as per claim 49), the graphical user interface item is a color scheme (as per claim 50), the graphical user interface item is a font (as per claim 51), and the graphical user interface item is a font size (as per claim 52). However, Pellegrino discloses a computer-based training system that includes a header image and a footer image positioned at a horizontal and vertical position (column 22, lines 14-21 - see Fig. 29), and a graphical user interface item that is a background image and color scheme (column 24, lines 9-12), and font (bolding) and font size (column 21, line 65 – column 22, line 3). It is noted that Pellegrino does not explicitly disclose a field that identifies horizontal and vertical positions of the header and footer images, however such a field would be inherent in the teachings of Pellegrino, since the system would not be able to place the header and footer images on the screen without a field that provides the system with coordinates designating a location where the images are to be placed. It would have been obvious to one skilled in the art at the time of the invention to modify the teachings of Ceretta by adding fields defining background, color scheme, fonts, and header and footer images, as taught by Pellegrino, with the motivation of providing a more structured, customized user interface screen.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter Egloff whose telephone number is (571) 270-3548. The examiner can normally be reached on M-F 7:30am - 5:00 pm EDT.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai can be reached at (571) 272-7147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/Kathleen Mosser/
Primary Examiner, Art Unit 3715

Peter Egloff
10/9/08



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/496,223	07/31/2006	Dennis R. Berman	TRV03-0001-8	6515
28422	7590	10/16/2008	EXAMINER	
HOYT A. FLEMING III P.O. BOX 140678 BOISE, ID 83714			EGLOFF, PETER RICHARD	
ART UNIT	PAPER NUMBER	3715		
MAIL DATE	DELIVERY MODE			
10/16/2008	PAPER			

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 11/496,223	Applicant(s) BERMAN, DENNIS R.
	Examiner PETER R. EGLOFF	Art Unit 3715

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on ____.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 41-56 is/are pending in the application.
 - 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) Claim(s) ____ is/are allowed.
- 6) Claim(s) 41-56 is/are rejected.
- 7) Claim(s) ____ is/are objected to.
- 8) Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 31 July 2006 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. ____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 7/31/06, 12/11/06, 7/12/07, 8/23/07, 1/12/08
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) Notice of Informal Patent Application
- 6) Other: ____

4/22/08 9/09/08

DETAILED ACTION***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 41, 47, 48, 49, 55 and 56 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 41, 45, 45, 51, 54 and 55 of copending Application No. 11/496198 in view of Ferriol et al. (US 2003/0129574 A1). Claim 41 of the present application recites all of the features of claim 41 of the '198 application, but adds the feature of "determining if a lockout period has expired; and (generating the fifth Web document) if the lockout period has expired." Ferriol, Par. 301, however, teaches that lockout periods are well known in the art, and it would have been obvious to one of ordinary skill in the art at the time of the invention to modify claim 41 of the '198 application by adding this lockout period to determine when to begin another education round, with the motivation of effecting the transfer of material

from short term to long term memory. Claim 49 of the present application and claim 51 of the '198 application recite the same steps, but are embodied in method claims, and claim 49 is thus unpatentable over claim 51 of the '198 application for the same reasons cited above. Claims 47 and 48, which are dependent on claim 41 of the present application, and claims 55 and 56, which are dependent on claim 49 of the present application, are identical to claims 44, 45, 54 and 55 of the '198 application, which are dependent on claims 41 and 51, respectively, and are thus unpatentable over claims 44, 45, 54 and 55 of the '198 application.

This is a provisional obviousness-type double patenting rejection.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 41-44, 47-52, 55 and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ceretta et al. (US Patent No. 6,370,355 B1) in view of Boon (US Patent No. 6,022,221) and Ferriol et al. (US 2003/0129574 A1).

Regarding claims 41 and 49, Ceretta discloses a program storage device storing a computer program, the computer program for execution by a computer system having a processor and a memory, the computer program when executed by the computer system (as per claim 41) and a method executed by a computer system having a processor and a memory (as per claim 49) performing the following: generating a first web document that enables selection of a training course that relates to a subject area (column 18, lines 40-44); generating a second web document that enables selection of a session of the training course, the session relating to a subset of the subject area (column 19, lines 22-35); and generating a third web document that enables selection of a part of the session, the part including a plurality of questions and a plurality of answers (testing) (column 19, lines 36-44; column 19, line 61). Ceretta does not explicitly disclose generating a fourth web document that enables selection of an introductory round, the introductory round enabling the typing of at least a portion of the at least one of the part's plurality of answers while referring to the at least one of the displayed part's plurality of answers, and generating a fifth web document that enables selection of a retention round, the retention round displaying, for at least a period of time, the at least one of the part's plurality of questions and a first subset of the at least one of the part's plurality of answers, the retention round enabling the typing of a second subset of the at least one of the part's plurality of answers. However, Boon discloses a computer-based learning system that includes a mode where the user is displayed the answer and retypes it into the answer field (column 9, lines 27-

39), and another mode where the user is presented with a part of the answer and prompted to type the remainder of the answer (column 10, lines 5-10). It would have been obvious to one skilled in the art at the time of the invention to modify the teachings of Ceretta by adding these modes taught by Boon, with the motivation of helping the user to memorize the answers to the questions. Ceretta and Boon do not explicitly disclose the steps of determining if a lockout period has expired, and generating the fifth web document if the lockout period has expired. However Ferriol discloses a computer-based system for learning and memorizing information that includes a schedule module which creates lockout period for various zones (e.g. normal zone, final review zone, compression zone, each of which presents the same material, but using a different method of reviewing or testing the material, similar to the two methods of testing taught by Boon, cited above), and only makes each zone available when its respective lockout period has expired (see Par. 301). Since Ferriol teaches the feature of creating a lockout period during which a round (zone) is activated, it would have been obvious to one skilled in the art at the time of the invention to modify the teachings of Ceretta and Boon by using a lockout period to inactivate the Retention round taught by Boon until a certain amount of time has passed, as taught by Ferriol, with the motivation of effecting the transfer of material from short term to long term memory.

Regarding claims 42-46 and 50-54, Ceretta and Boon do not explicitly disclose the determining if the lockout period has expired includes determining the time between the completion of the introductory round and another time (as per claims 42 and 50), the beginning of the introductory round and another time (as per claims 43 and 51), the beginning of the introductory round and the desired beginning of the retention round (as

per claims 44 and 52), or the time between the beginning (as per claims 45 and 53) or completion (as per claims 46 and 54) of a prior retention round. However, Ferriol further teaches that the scheduling of learning rounds is based in part upon the "pattern of prior exposure" to the material (see Par. 301, last 7 lines). Since Ferriol explicitly teaches basing the scheduling of subsequent rounds of learning (which is done using lockout periods), and the rounds of learning contain different methods, similar to the introductory rounds and retention rounds taught by Boon, it would have been obvious to one skilled in the art at the time of the invention to modify the teachings of Ceretta, Boon and Ferriol by specifying that the lockout period is calculated based on the beginning or ending of prior rounds, as required in claims 42-46 and 50-54, with the motivation of re-presenting material at the specific times necessary to shift the material from short term to long term memory and maintain it in long term memory (Fig's 2-5 of Ferriol and their corresponding descriptions supply this motivation).

Regarding claims 47 and 55, Ceretta further discloses the generating at least one of the web documents includes generating a dynamic HTML document (column 5, lines 43-62), at least in part from an ASP document (column 6, line 66 - column 7, line 12).

Regarding claims 48 and 56, Ceretta further discloses the generating at least one of the web documents includes generating a web document at least in part from a database that includes: a course name and course ID (course key field – column 7, lines 37-41), a session name and session ID (course instance key – column 8, lines 54-60), and a part ID (column 19, lines 45-55), and a course lockout period (column 8, lines 13-19, lines 61-67).

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Adams (US Patent No. 6,644,974) teaches a computer-based learning system that provides refresher educational sessions after a specific period of time has expired (column 4, lines 45-53).

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter Egloff whose telephone number is (571) 270-3548. The examiner can normally be reached on M-F 7:30am - 5:00 pm EDT.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai can be reached at (571) 272-7147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/Kathleen Mosser/
Primary Examiner, Art Unit 3715
Peter Egloff
10/9/08



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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HOYT A. FLEMING III			EGLOFF, PETER RICHARD	
P.O. BOX 140678			ART UNIT	PAPER NUMBER
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MAIL DATE		DELIVERY MODE		
10/16/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 11/496,337	Applicant(s) BERMAN, DENNIS R.
	Examiner PETER R. EGLOFF	Art Unit 3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

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Status

- 1) Responsive to communication(s) filed on ____.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) **41-58** is/are pending in the application.
 - 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) Claim(s) ____ is/are allowed.
- 6) Claim(s) **41-58** is/are rejected.
- 7) Claim(s) ____ is/are objected to.
- 8) Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 31 July 2006 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. ____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

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Paper No(s)/Mail Date 7/31/06, 12/11/06, 4/13/07, 8/23/07, 1/12/08
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) Notice of Informal Patent Application
- 6) Other: ____

4/22/08, 9/9/08

DETAILED ACTION***Claim Rejections - 35 USC § 101***

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 41-58 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 41 recites a computer readable storage medium storing a database for use by a computer for implementing a learning system. However, the database as recited merely contains a number of tables containing a number of fields. Such a collection of data recorded on a computer readable medium is deemed to be nonfunctional descriptive material, and is not statutory since no requisite functionality is present to satisfy the practical application requirement. Merely claiming nonfunctional descriptive material, i.e. abstract ideas, stored on a computer readable medium, does not make it statutory. See MPEP 2106.01. Claims 42-58 are rejected for failing to cure the deficiencies of claim 41, above.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 41 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ceretta et al. (US Patent No. 6,370,355 B1).

Regarding claims 41 and 42, Ceretta discloses a computer readable storage medium storing a database, the database for use by a computer system having a processor and a memory, the database for use by a computer program for implementing a learning system, the database comprising: a plurality of tables including a primary key that identifies a client (end-user ID) and a field that identifies the name of a client (end-user's last name) (column 7, lines 15-27), a field that identifies the number of days of training that a student must take to complete a training session (column 8, lines 13-19), a field that is used by the computer program to control a training sequence (column 9, lines 35-41) (as per claim 41), a primary key that identifies a course (course key field), a field that identifies the name of the course, and a field that is used by the computer program to group the courses with other courses (package ID field) (column 7, lines 28-40) (also see Fig. 3). It is noted that Ceretta does not explicitly disclose each of the aforementioned fields and keys occur in one table (as per claim 41) or in each of two tables (as per claim 42); instead, Ceretta discloses the fields and keys occur throughout 8 tables in a database. However, at the time the invention was made, it would have been an obvious matter of

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design choice to a person of ordinary skill in the art to use only one or two tables to store the various keys and fields cited above, and to arrange the various keys and fields as claimed by applicant, because applicant has not disclosed that using only one or two tables provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Ceretta's arrangement, and applicant's invention, to perform equally well with either the arrangement used by Ceretta or the claimed arrangement because both arrangements would perform the same function of organizing the various data fields involved in an internet based learning system. Therefore, it would have been *prima facie* obvious to modify the teachings of Ceretta to obtain the invention as specified in the claims, because such a modification would have been considered a mere design consideration which fails to patentably distinguish over the prior art of Ceretta.

5. Claims 43-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ceretta et al. (US Patent No. 6,370,355 B1) in view of Pellegrino et al. (US Patent No. 6,149,441).

Regarding claims 43-58, Ceretta further discloses a primary key that identifies a client profile and a foreign key that identifies a client (as per claims 43-58) (see Fig. 3). Ceretta does not explicitly disclose a field that identifies a header image (as per claims 43-48), a field that determines a horizontal screen location of the header image (as per claims 43, 45, 46 and 48), a field that determines a vertical screen location of the header image (as per claims 44, 45, 47 and 48), a field that identifies a footer image, and a field that determines a horizontal and vertical screen location of the footer image (as per

claims 49 and 54), a field that identifies a background image (as per claims 50 and 55), a field that identifies a color scheme (as per claims 51 and 56), a field that identifies a font (as per claim 52 and 57), and a field that identifies a font size (as per claims 53 and 58). However, Pellegrino discloses a computer-based training system that includes a field that identifies a background image and color scheme (column 24, lines 9-12), a field that identifies font (bolding) and font size (column 21, line 65 – column 22, line 3), a field that identifies a header image and a footer image (column 22, lines 14-21; Fig. 29). Pellegrino does not explicitly disclose a field that identifies horizontal and vertical positions of the header and footer images, however such a field would be inherent in the teachings of Pellegrino, since the system would not be able to place the header and footer images on the screen without a field that provides the system with coordinates designating a location where the images are to be placed. Accordingly, it would have been obvious to one skilled in the art at the time of the invention to modify the teachings of Ceretta by adding fields defining background, color scheme, fonts, and header and footer images, as taught by Pellegrino, with the motivation of providing a more structured, customized user interface screen. Ceretta and Pellegrino do not explicitly disclose a field that indicates whether a client has an active graphical user interface (as per claims 43-58), however the examiner takes OFFICIAL NOTICE that computer applications that include the option of enabling or disabling a customized graphical user interface according to the preference of the user are well known in the art, and it would have been obvious to one skilled in the art at the time of the invention to modify the teachings of Ceretta and Pellegrino by adding a field that indicates whether a client has

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an active graphical user interface, with the motivation of allowing the user to decide whether he desires to customize his graphical interface.

Similar to the rejection of claims 41 and 42, above, it is further noted that Ceretta and Pellegrino do not explicitly disclose each of the aforementioned fields occur in one table; instead, Ceretta discloses the fields and keys occur throughout 8 tables in a database. However, at the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to use only one table to store the various fields cited above, and to arrange the various fields as claimed by applicant, because applicant has not disclosed that using only one or two tables provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Ceretta's arrangement, and applicant's invention, to perform equally well with either the arrangement used by Ceretta or the claimed arrangement because both arrangements would perform the same function of organizing the various data fields involved in an internet based learning system. Therefore, it would have been *prima facie* obvious to modify the teachings of Ceretta to obtain the invention as specified in the claims, because such a modification would have been considered a mere design consideration which fails to patentably distinguish over the prior art of Ceretta.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter Egloff whose telephone number is (571) 270-3548. The examiner can normally be reached on M-F 7:30am - 5:00 pm EDT.

Art Unit: 3714

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/Kathleen Mosser/
Primary Examiner, Art Unit 3715

Peter Eglöff
10/9/08